

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/17/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000229
LC 2002-000230

FILED: _____

STATE OF ARIZONA

ANICA PACHECO PARKER

v.

REBECCA DORTHEA DUNN

BRIAN D STRONG

MESA JUSTICE CT-EAST
REMAND DESK CR-CCC

MINUTE ENTRY

EAST MESA JUSTICE COURT

Cit. No. #CR01-1564MI

Charge: INTERFERING WITH JUDICIAL PROCEEDINGS, A CL 1
MISDEMEANOR

DOB: 07/16/52

DOC: ON OR BETWEEN 05/06/01 AND 05/07/01

LET THE RECORD REFLECT CR 2002-000230 is consolidated under
CR 2000-000230.

This Court has jurisdiction of this misdemeanor criminal
appeal pursuant to the Arizona Constitution Article VI, Section
16, and A.R.S. Section 12-124(A).

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This matter has been under advisement without oral argument and this Court has considered and reviewed the record of the proceedings from the East Mesa Justice Court, the exhibits made of record, and the Memoranda submitted by counsel.

Appellant, Rebecca Dortehea Dunn, was charged in separate misdemeanor complaints with two counts of Interfering with Judicial Proceedings, class 1 misdemeanors, in violation of A.R.S. Section 13-2810. The first crime was alleged to have occurred between May 6 and May 7, 2001. The second crime was alleged to have occurred on July 22, 2001. During the proceedings before the lower court, Appellant was not represented by counsel. The record does not reflect any notice by the State to seek jail time in the event Appellant was convicted.¹

Appellant's case proceeded to a bench trial and the Appellant was found guilty of both charges. Appellant was sentenced on April 11, 2002 to 36 months of probation with a requirement that she remain a law abiding citizen and complete and anger management program with advanced counseling within six months. Appellant was ordered to have no contact with the victim consistent with a Superior Court Domestic Violence Order of Protection. No jail time was imposed as a condition of probation. Appellant has filed a timely Notice of Appeal as to both charges.

The first issue raised by Appellant concerns an alleged denial of her right to counsel. However, Rule 6.1(b), Arizona Rules of Criminal Procedure, clearly conditions the right to appointed counsel upon the possibility of a loss of liberty should conviction occur or in those cases, which require court-appointed counsel in the court's discretion. This case fits

¹ See Rule 6.1(b), Arizona Rules of Criminal Procedure, which provides that an indigent Defendant shall be entitled to have a court-appointed attorney in any criminal proceeding which may result in punishment by loss of liberty or where the court concludes that the interests of justice so require.

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neither situation, and this Court concludes that the trial judge did not err in denying Appellant's requests for counsel. More importantly, this Court notes that Appellant was given the opportunity and time to hire counsel at her own choosing prior to her trial.

The second issue raised by Appellant is whether "a non-attorney Justice of the Peace is really the appropriate judicial officer to interpret a Superior Court order that contains such vague and ambiguous terms?"² This Court notes that Appellant had the right and opportunity to an automatic Change of Judge pursuant to Rule 10.2, Arizona Rules of Criminal Procedure, if she had believed that the trial judge was ill-equipped to decide her case. No such Change of Judge was filed in this case. Likewise, there was no request for a law-trained judge made at any time. Appellant has waived this issue by her failure to object in the trial court.

Thirdly, Appellant contends that the State failed to comply with Rule 15.1, Arizona Rules of Criminal Procedure. Appellant's contentions that the State failed to provide discovery information to her prior to trial are not supported by the record. The record does not disclose any objections by Appellant to the sufficiency of discovery materials furnished by the State, or that the State failed to make such discovery. Generally, the failure to make an objection at trial constitutes a waiver of that issue on appeal, unless the error amounts to fundamental error.³ It is clear from the record that substantial evidence exists to support the trial court's judgment, that Appellant was able to adequately cross-examine and confront the witnesses who testified against her. Therefore, this Court finds no prejudice resulting to Appellant.

² Appellant's Opening Memorandum at page 6.

³ See State v. Van Adams, 194 Ariz. 408, 984 P.2d 16 cert.denied, 120 S.Ct. 1199, 145 L.Ed.2d 1102 (1999); State v. Gallegos, 178 Ariz. 1, 870 P.2d 1097, cert.denied 115 S.Ct. 330, 513 U.S. 934, 130 L.Ed.2d 289, appeal after remand, 185 Ariz. 340, 916 P.2d 1056, cert.denied 117 S.Ct. 489, 519 U.S. 996, 136 L.Ed.2d 382 (1994); State v. Valles, 162 Ariz. 1, 780 P.2d 1049 (1989).

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Next, Appellant contends she was not permitted to cross-examine the arresting officers. Appellant's contention is not supported by the record. The record reflects extensive cross-examination, but that Appellant persisted in arguing with the witnesses and attempting to testify in lieu of cross-examination. Admittedly, Appellant was not law trained. Nevertheless, the form of Appellant's questions to the officers was objectionable. The trial judge did not err in sustaining the prosecution's objections to Appellant's improper questions of witnesses where Appellant attempted to testify herself.

Appellant also complains, in a one sentence conclusory statement, that the court "forced her to testify in lieu of cross-examining the arresting officers about her statements."⁴ Appellant's allegation is also unsupported by the record. The trial judge did not force Appellant to testify, and cautioned her about suffering cross-examination if she chose to testify. This Court finds no error in the limitations on cross-examination by the trial court, or the manner in which the trial court permitted Appellant to testify herself.

Finally, Appellant contends that the trial court erred in denying her request for a continuance made at the time of trial to enable Appellant to secure counsel to represent her at trial. Generally, the issue whether to grant or not to grant a continuance is a matter within the sound discretion of the trial judge.⁵ A trial judge's ruling on a Motion to Continue must not be disturbed in the absence of a clear abuse of discretion and resulting prejudice to the party whose motion was denied.⁶ The record in this case does not reflect an abuse of discretion by the trial judge in denying Appellant's Motion to Continue.

⁴ Appellant's Memorandum at page 7.

⁵ State v. Amarillas, 141 Ariz. 620, 688 P.2d. 628 (1984); State v. Cook, 172 Ariz. 122, 834 P.2d. 1267 (App. 1990).

⁶ State v. Amarillas, supra; State v. Jackson, 157 Ariz. 589, 760 P.2d. 589 (App. 1988).

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Appellant had considerable time prior to the trial date to hire an attorney, if she wished to do so. This Court finds no error.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the East Mesa Justice Court.

IT IS FURTHER ORDERED remanding these cases back to the East Mesa Justice Court for all further and future proceedings in these cases.